

The PRESIDING OFFICER. The Chair will so advise the Senator.

### ASBESTOS

Mr. KENNEDY. Mr. President, the asbestos legislation which is before the Senate is both unfair and unworkable. It is unfair because many seriously ill victims of asbestos are completely excluded from compensation under the trust fund, and it is unworkable because the bill does not have adequate funding to ensure that all the victims who are eligible for compensation under the trust fund will actually receive what the legislation promises them.

These are fundamental flaws that cannot be corrected by a few last-minute amendments. They go to the heart of the bill. This bill will end up hurting the seriously ill victims of asbestos disease whom we are trying to help.

S. 852 fails the test of fairness for many of those most in need of assistance. Now is the time to take a serious look at how the proposed trust fund would operate—now, before it is too late.

Who would be excluded from receiving compensation even though they are seriously ill from asbestos exposure? Who would be left in legal limbo, ineligible for the trust fund and unable to pursue their claims in court?

I have said many times that the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. We cannot allow the tragedy of these workers and their families' enduring to become lost in a complex debate about the economic impact of asbestos litigation. The litigation did not create these costs. Exposure to asbestos created them. They are the cost of medical care, the cost of lost wages, incapacitated workers, the cost of providing for the families of workers who died years before their time. Those costs are real.

No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Unfortunately, S. 852 would shift more of the financial burden onto the backs of injured workers. That is unacceptable.

Let's look at what this legislation would really do to victims. It would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into legal limbo for up to 2 years. Their need for compensation to cover medical expenses, basic family necessities, will remain, but they have nowhere to turn for relief.

Under this legislation, even the exigent health claims currently pending in the courts, will be automatically stayed for 9 months as of the date of enactment. These cases all involve people who have less than a year to live due to mesothelioma or some other dis-

ease caused by asbestos exposure. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written too broadly. It would stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of dying witnesses cannot be taken to preserve their testimony. The stay would deprive victims of their last chance at justice. I cannot believe the authors of the bill intended such a harsh result, but that is what the legislation does.

I strongly believe, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund becomes operational. Their ability to recover compensation in the court should not be halted until the trust fund is open for business and they are able to receive compensation from the fund. It is grossly unfair to leave these dying victims in legal limbo. For them, the old adage is especially true: Justice delayed is justice denied.

We should not deprive them of their last chance, their only chance to receive some measure of justice before asbestos-induced diseases silence them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current state takes that last chance away from them. I intend to offer an amendment that allows these severely ill victims to have their day in court.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than 40,000 victims suffering with asbestos-related lung cancers. These victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny from the fund. They are losing their right to go to court. They are being denied any right to compensation under the fund. They are, in essence,

being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system too much money goes to people who are not really sick and too little goes to those who are seriously ill. Lung cancer victims who have had years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet they are, under this legislation—not the previous legislation but under this legislation—completely excluded. Any person who was exposed to asbestos for 15 or more years and now has lung cancer should be eligible for compensation from the trust fund. Their cases would be reviewed individually by a panel of physicians to determine whether asbestos was a substantial contributing factor to their lung cancer. These 40,000 victims of asbestos should not be arbitrarily excluded from receiving compensation.

They were included in the original legislation. It was agreed to by medical experts for both business and labor. That provision should be restored to the bill. I will be proposing an amendment to rectify this serious injustice.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women, and children who lived in the vicinity of asbestos-contaminated sites, such as mining operations and processing plants, can and do contract asbestos-induced diseases.

The reason this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who live near the many processing plants from my State of Massachusetts, in western Massachusetts, to California, that received the lethal ore from the Libby mine. The deadly dust from Libby, MT, was spread across America. W.R. Grace shipped almost 10,000 pounds of ore to processing facilities in the 1960s through the 1990s, including Easthampton, MA, in western Massachusetts, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of the unfairness caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund. These red spots on this map are in States all across the

country with similar problems. Yet every one of them is excluded.

Community asbestos contamination can result from many different sources. Medical experts, for example, say it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment, as well. They should not be arbitrarily excluded from compensation, as if somehow their suffering is somehow less worthy of recognition than the suffering of asbestos victims. Yet that is what S. 852 does.

There are many of those victims. I have talked with the extraordinarily brave and courageous workers who came to the sites of the Trade Towers on September 11, working on those areas for days and weeks for an intense period of time, and their exposure to asbestos fibers during that work will pose an enormous health threat to them in the years to come. We all know there can be a significant period of latency. Are we going to exclude those extraordinary men and women who were out there trying to do an incredible job for the people, not just of New York but for our country? This legislation excludes them.

The asbestos trust fund is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. There is no principle more basic. Yet this bill violates that principle.

Our friend and colleague from Delaware intends to offer an amendment that if we run out of money, the provisions will be there for them to go back into the tort system. Just accept the Biden amendment. It makes it extremely clear and eliminates the roadblocks for going back into the tort system, as the current legislation does. As I understand it, there is not a willingness to accept the Biden amendment.

Another major flaw in this legislation is it lacks adequate funding. Putting it bluntly, S. 852 does not provide sufficient money to compensate the victims of asbestos diseases that it promises to cover. That is the essence of the budget debate we are having about the bill. The sponsors claim the budget point of order against the bill is technical, but the financial inadequacy of the trust fund to meet its obligation is very real. Should the trust fund fail, both asbestos victims and the taxpayers will pay a heavy price.

A broad range of experts have analyzed S. 852 and concluded that the asbestos trust fund created by this legislation is seriously underfunded. Senator CONRAD has addressed this in great detail. I certainly hope our colleagues will read his remarks carefully.

If S. 852 is enacted, the United States will be paying a commitment that hundreds of thousands of seriously ill asbestos victims will be compensated, but it will not have to ensure that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis and this Congress will bear the responsibility for it.

Since the trust fund will be borrowing from the U.S. Treasury in the first few years of operation, if it becomes insolvent it will have a direct impact on American taxpayers. Let me point out, we do not do very well in setting up these trust funds to compensate individuals. We certainly have not done it with regard to the downwinders in other trust funds. There is little reason to believe we are going to do it or would do it in this circumstance, either.

The argument that there are serious inadequacies in the way asbestos cases are adjudicated today does not mean that any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation that fails to provide a guarantee of adequate funding to make sure these injured workers covered by the trust fund will actually receive what the bill promises them. This bill will do harm to these asbestos victims. I intend to vote no.

There is no reason, if we reject this legislation, we cannot come back with legislation that builds on a trust fund that is adequate and will do the job. That is what many Members believe is the way we ought to go. This is not such a bill.

#### THE BUDGET

Mr. KENNEDY. Mr. President, I will talk for a few moments about the budget that has been submitted by this administration in the last few days and how it fails to address those needs.

Effectively, in the budget the President has set up, we are going to see a very serious and significant decline in supporting some enormously needed programs that help to provide opportunities for so many of our people in this country, such as educational programs and health programs, all in order that we provide a tax break for individual Americans at the cost of \$45 billion or \$46 billion this year.

That is what a budget is about: priorities. When I go back to Massachusetts, one of the first orders of business people are talking to me about is: What in the world did the Congress ever do in passing that prescription drug program?

I take pride in the fact we passed in the Senate a very good prescription drug program with Senator BOB GRAHAM from Florida. We received over 70 votes in the Senate. We built that program using the Medicare system, which is tried, tested, and depended upon by millions of Americans.

Medicare was defeated in 1964 and accepted in 1965 in the Senate. Right after that, we accepted the Medicaid Program to look after the neediest people in our society—primarily children, women, and disabled individuals—to take care of the poorest of the poor.

Those programs were implemented in 11 months—11 months. It has been over a year for this program to be implemented. And they did not have a computer in 1965 to implement it, but it worked on the principle of building the Medicare system similar to Social Security. American people had confidence in it, and it worked.

Well, we went to conference with the House of Representatives, and that is when the influence of the insurance industry and the drug industry came to play. They basically hijacked what was going to be a Medicare prescription drug program for our senior citizens, in a way, and drafted that program to serve not the senior citizens—not the senior citizens—but to serve the special interests.

I opposed that on the floor of the Senate. Our Republican friends forced that on through. And now it is chaos in my State of Massachusetts with that prescription drug program. Why, at least, didn't our Republican friends say: All right, let's have some real competition; let's put the private sector and Medicare—let them compete and let our senior citizens make the choice.

Do you think they would do that? No. They would not bring a program back here that was built on the Medicare system. They would not permit the seniors in my State to be able to make a choice. But they will say: We trust Medicare. It provides for our doctors' bills. It provides for our hospitalization.

THE PRESIDING OFFICER. The Senator has 5 minutes.

Mr. KENNEDY. In 1964 and 1965, when you passed that, you did not include prescription drugs because 97 percent of the private sector did not include prescription drugs. Why didn't we do the prescription drug program just like we did the Medicare Program? Simple, workable, understandable—finished.

No, no, we can't do that. We have to do it a different way. We are going to have—instead of the Medicare system, which is tried and tested and people understand—we are going to give the seniors in Massachusetts 45 different programs with different copays, different formularies, different deductibles.

There is mass confusion with that program. Not only is there mass confusion, but you have the extraordinary circumstance that when a senior says: OK. I like this formulary. I can afford this deductible. I can afford this copay. I think I will go into this because of the cost of prescription drugs—and they sign on to it. There is an enormously interesting fact; that is, the company they sign up with can change their formulary, can change the deductible and copay. Do you think the